IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1707 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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THAKKAR DIPAKKUMAR SHAMBHULAL
Versus
THAKKAR NIRUBEN KANTILAL & Ors.

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Appearance :
MR VL THAKKAR for Applicant
None for Respondents : 1 - 2.
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent No.3

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/09/2007

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner husband - original respondent has prayed for an appropriate

order for declaration that the petitioner is responsible for paying only Rs.900/- to the present respondents as per the order passed by the learned J.M.F.C. Harij in Criminal Misc. Application No. 29 of 2003 dated 27.04.2006 and not responsible for paying Rs.2000/- to the present respondents as per the order dated 21.10.2003 passed by the learned Civil Judge(S.D.), Patan under Section 24 of the Hindu Marriage Act and final order passed in Hindu Marriage Petition No.4 of 2003.

2. That an application was submitted by respondents Nos. 1 and 2 – Wife and Minor Child for getting maintenance under Section 125 of the Criminal Procedure Code before the learned J.M.F.C., Harij by way of Criminal Misc. Application No. 29 of 2003 and the learned Additional JMFC, Harij *vide* judgment and order dated 27.04.2006 considering the order passed by the Civil Court granting interim alimony in Hindu marriage Petition, partly allowed the said application and directed the petitioner to pay Rs.500/- to Wife and Rs.400/- to the minor child by way of maintenance. That thereafter by judgment and order dated 24.11.2006 the learned 5th Civil Judge and

J.M.F.C., Patan passed an order in Hindu Marriage Petition No.4 of 2003, in confirming the interim alimony, the petitioner was directed to pay Rs.2000/- to the respondents -herein. It is the contention on behalf of the petitioner that as the petitioner is directed to pay maintenance as provided under Section 125 of the Cr.P.C., the petitioner is not liable to pay any amount passed under Hindu Marriage Petition and therefore, the petitioner has prayed for aforesaid reliefs.

3. Learned Counsel appearing on behalf of the petitioner has vehemently submitted that whatever amount to be paid by the petitioner under the order passed by the learned J.M.F.C. is required to be adjusted while considering the payment pursuant to the order passed by the learned Civil Court and/or the petitioner is liable to pay either maintenance and/or permanent alimony. The petitioner is not required to pay both the amount.

4. At the outset it is required to be noted that as held in various decisions of this Court proceedings under Hindu Marriage Petition as well as

proceedings under Section 125 of the Cr.P.C. are independent and both the applications are maintainable. However, it is required to be considered that while passing the orders the Courts' are required to consider the order passed by another Court in other proceedings and/or if the said orders are not considered then amount paid under one order is required to be adjusted while considering the payment under another order. However in the present case the learned J.M.F.C., Harij passed an order under Section 125 of the Cr.P.C. and the learned Judge has considered the order passed by the Civil Court in Hindu Marriage Petition while granting interim alimony of Rs.1500/- to the Wife and Rs.500/- to the minor child. Considering above and considering the evidence on the record and income of the petitioner, order has been passed to pay further amount of Rs.500/- to the Wife and Rs.400/- to the minor child.

5. Under the circumstances, it appears that while passing the order under Section 125 of the Cr.P.C. learned Magistrate has considered the order passed by the learned Civil court, otherwise looking

to the income of the petitioner, the learned Magistrate would have and/or could have awarded amount of maintenance much higher then what is awarded i.e. Rs.500/- to the wife and Rs.400/- to the minor child. Under the circumstances, the contention on behalf of the petitioner cannot be accepted. There is no substance in the present petition which is filed under Article 227 of the Constitution of India. There is no jurisdictional error much less than law committed by the Courts' below. Under the circumstances, present petition deserves dismissal, and accordingly it is dismissed.

[M.R.Shah, J.]

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